

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Michael Bell *et al.*
Ser. No. : 09/937,542
Filing Date : September 26, 2001
For : SCAPEL ASSEMBLY
Examiner : Victor X. Nguyen
Art Unit : 3731
Atty. Docket : 40198/324831 (CAN100)

Mail Stop: Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

COMMUNICATION REGARDING PATENT TERM ADJUSTMENT (PTA)
INDICATED IN THE NOTICE OF ALLOWANCE

Sir:

1. A Notice of Allowance was mailed on October 19, 2009 for the present application. One of the attachments to the Notice of Allowance was a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) that indicated that the total PTA to date is 0 days. The undersigned respectfully submits that the correct total PTA is 1691 days.

2. The determination of the total PTA of 0 days is erroneous first because the US Patent & Trademark Office (PTO) PTA calculator failed to account for four separate Patent Office Delays. Three PTO delay periods warrant a PTA credit of 1708 days for the PTO delay under 35 U.S.C. § 154(b)(1)(A) and 37 C.F.R. § 1.702(a)(1) ("A Delay"). The fourth PTO delay period warrants a PTA credit of 1171 days for the PTO delay under 35 U.S.C. § 154(b)(1)(B) and 37 C.F.R. § 1.702(b) ("B Delay").

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this submission is being filed via EFS
Web with the U.S. Patent and Trademark Office on January 19, 2010.

Lesley L. Andrew: /Lesley L. Andrew/

These four PTO delay periods should have their days added together in accordance with the reasoning in *Wyeth et al. v. Dudas*, No. 07-1492 (D.D.C. September 30, 2008). The first period of delay (“A Delay”) overlaps with the second period of delay (“B Delay”) by 905 days. Accordingly, a total PTA credit of 1974 days is appropriate based upon the PTO delay. The total number of PTA debits of 283 days for applicant delay is also not included in the Determination of Patent Term Adjustment. Thus, the correct total PTA to date is 1691 days (i.e. 1974 days – 283 days).

Thus, Applicants believe that the total PTA credit for PTO delay is 1974 days, the total PTA debit for applicant delay is 283 days, and the total PTA under 1.703 (f) is 1691 days.

3. In accordance with § 1.705(b), this application for patent term adjustment is filed no later than the payment of the issue fee but after the date of the mailing of allowance.

4. The following statements are required by 37 C.F.R. § 1.705(b)(2)(i).

- i) The correct total PTA credit is 2879 days without considering overlap.
- ii) The basis for the 1708 days PTA credit is under §§ 1.702(a)(1) and (a)(2) and is due to the PTO's failure to mail a notification under 35 U.S.C. § 132 or a notice of allowance within 14 months of the application's filing date and the PTO's failure to respond within 4 months after the filing of a reply under 35 U.S.C. § 132. The basis for the 1171 days is under § 1.702(b) and is due to the PTO's failure to issue a patent within three years of the filing date.

5. The following statements are required by 37 C.F.R. § 1.705(b)(2)(ii).

- i) The relevant dates as specified in § 1.703(a) for three parts of the PTA credit are as follows:

- (a) The date of November 26, 2002, which is the date that is fourteen months after the date on which the application was

filed under 35 U.S.C. § 111(a); and the date of June 24, 2003, which is the mailing date of a notification under 35 U.S.C. § 132. Thus, this period of delay runs from November 26, 2002 to June 24, 2003. This period of delay is 210 days.

(b) The date of January 10, 2004, which is the date that is four months after the date on which the response after Non-Final Action was filed; and the date of March 20, 2007, which is the mailing date of a Final Rejection. Thus, this period of delay runs from January 10, 2004 to March 20, 2007. This period of delay is 1165 days.

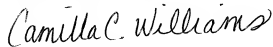
(c) The date of April 11, 2008, which is the date that is four months after the date on which the Request for Continued Examination was filed; and the date of March 10, 2009, which is the mailing date of a Non-Final Rejection. Thus, this period of delay runs from April 11, 2008 to March 10, 2009. This period of delay is 333 days.

- ii) The relevant dates as specified in § 1.703(b) for the other part of the PTA credit are as follows: the date of September 26, 2004, which is three years after the date on which the application was filed under 35 U.S.C. 111(a) and the date of December 11, 2007, which is the date that a request for continued examination of the application under 35 U.S.C. § 132(b) was filed. Thus, the period of delay runs from September 26, 2004 to December 11, 2007. This period of delay is 1171 days.
- iii) The total PTA under § 1.703(f) is 1691 days, which is the total PTA credits for PTO delay (210 days + 1165 days + 333 days + 1171 days) less the overlap of 905 days for i(b) and ii less the total PTA debits for applicant delay of 283 days.

6. Any patent granted on this application is not subject to a terminal disclaimer. See 37 C.F.R. § 1.705(b)(2)(iii).
7. The following statements are required by 37 C.F.R. § 1.705(b)(2)(iv)(A):
- i) The Amendment after Final Rejection filed September 6, 2007 was filed after the three month period for filing a response. Under § 1.704(b), the period of adjustment for delay associated with this reply begins on the day after the date that is three months after the date of mailing of the Office Action on March 20, 2007 and ends on the date the reply was filed. Thus, the period of delay runs from June 20, 2007 to September 6, 2007. This period of delay is 78 days.
 - ii) The Amendment after Final Rejection filed on September 6, 2007 did not include a Notice of Appeal and the patent application was deemed abandoned as of September 20, 2007. According to 37 CFR § 1.704(c)(3)(ii), abandonment of the application or results in a delay that is calculated from the date of abandonment to the date that is four months after the date the grantable petition to revive the application was filed (September 20, 2007 to February 11, 2008). Thus, this period of delay is 144 days.
 - iii) The Response after Non-Final Action filed August 10, 2009 was filed after the three month period for filing a response. Under § 1.704(b), the period of adjustment for delay associated with this reply begins on the day after the date that is three months after the date of mailing of the Office Action on March 10, 2009 and ends on the date the reply was filed. Thus, the period of delay runs from June 10, 2009 to August 10, 2009. This period of delay is 61 days.
- Thus, the total period of delay for applicant delay is 283 days (78 days + 144 days + 61 days).

The Commissioner is authorized to charge any necessary fees that may be due or credit any overpayment to Deposit Account No. 11-0855.

Respectfully submitted,

A handwritten signature in black ink that reads "Camilla C. Williams". The script is cursive and fluid.

Camilla C. Williams
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Attorney Docket No. 40198/324831

Encl.: Exhibit A - Copy of PTA History for Application No. 09/937,542 Printed from PAIR on January 13, 2010.

09/937,542 SCALPEL ASSEMBLY

01-13-
2010::09:57:19**Patent Term Extensions**

Patent Term Extension (PTE) for Application Number: 09/937,542

Explanation Of Calculations

| | | | |
|--------------------------|------------|----------------------------------|---|
| Filing or 371(c) Date: | 09-26-2001 | USPTO Delay (PTO) Delay (days): | 0 |
| USPTO Adjustment (days): | +0 | Corrections (APPL) Delay (days): | 0 |
| | | Total PTE (days): | 0 |

Patent Term Extension History

| Date | Contents Description | PTO(Days) | APPL(Days) |
|------------|---|-----------|------------|
| 10-19-2009 | Mail Notice of Allowance | | |
| 10-19-2009 | Document Verification | | |
| 10-19-2009 | Notice of Allowance Data Verification Completed | | |
| 10-19-2009 | Case Docketed to Examiner in GAU | | |
| 10-13-2009 | Examiner's Amendment Communication | | |
| 10-01-2009 | Examiner Interview Summary Record (PTOL - 413) | | |
| 07-31-2009 | Information Disclosure Statement considered | | |
| 07-31-2009 | Reference capture on IDS | | |
| 07-31-2009 | Information Disclosure Statement (IDS) Filed | | |
| 09-08-2009 | Date Forwarded to Examiner | | |
| 08-10-2009 | Response after Non-Final Action | | |
| 08-10-2009 | Request for Extension of Time - Granted | | |
| 08-18-2009 | Case Docketed to Examiner in GAU | | |
| 07-31-2009 | Information Disclosure Statement (IDS) Filed | | |
| 03-10-2009 | Mail Non-Final Rejection | | |
| 03-09-2009 | Non-Final Rejection | | |
| 03-09-2009 | Mail Notice of Withdrawn Action | | |
| 03-09-2009 | Date Forwarded to Examiner | | |
| 03-09-2009 | Letter Withdrawing / Vacating Office Action | | |
| 01-06-2009 | Miscellaneous Incoming Letter | | |
| 12-03-2008 | Miscellaneous Incoming Letter | | |
| 12-18-2008 | Mail Examiner Interview Summary (PTOL - 413) | | |
| 12-08-2008 | Examiner Interview Summary Record (PTOL - 413) | | |
| 08-05-2008 | Mail Non-Final Rejection | | |
| 08-01-2008 | Non-Final Rejection | | |
| 07-01-2008 | Mail-Petition to Revive Application - Granted | | |
| 07-01-2008 | Petition to Revive Application - Granted | | |
| 12-17-2007 | Date Forwarded to Examiner | | |
| 12-17-2007 | Date Forwarded to Examiner | | |
| 12-11-2007 | Request for Continued Examination (RCE) | | |
| 12-17-2007 | Disposal for a RCE / CPA / R129 | | |
| 12-11-2007 | Workflow - Request for RCE - Begin | | |
| 10-11-2007 | Petition Entered | | |
| 09-27-2007 | Mail Advisory Action (PTOL - 303) | | |

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|------------|--|
| 09-25-2007 | Advisory Action (PTOL-303) |
| 09-10-2007 | Date Forwarded to Examiner |
| 09-06-2007 | Amendment after Final Rejection |
| 09-06-2007 | Request for Extension of Time - Granted |
| 03-20-2007 | Mail Final Rejection (PTOL - 326) |
| 03-19-2007 | Final Rejection |
| 03-12-2007 | Date Forwarded to Examiner |
| 02-21-2005 | Response after Non-Final Action |
| 11-17-2005 | Mail Notice of Rescinded Abandonment |
| 04-17-2006 | Case Docketed to Examiner in GAU |
| 11-30-2005 | IFW TSS Processing by Tech Center Complete |
| 11-17-2005 | Notice of Rescinded Abandonment in TCs |
| 11-17-2005 | Mail-Petition to Revive Application - Granted |
| 02-21-2005 | Petition Entered |
| 01-24-2005 | Mail Abandonment for Failure to Respond to Office Action |
| 01-21-2005 | Aband. for Failure to Respond to O. A. |
| 02-18-2004 | Information Disclosure Statement (IDS) Filed |
| 02-18-2004 | Information Disclosure Statement (IDS) Filed |
| 06-24-2003 | Mail Notice of Restarted Response Period |
| 06-16-2003 | Letter Restarting Period for Response (i.e. Letter re: References) |
| 03-10-2003 | Mail Non-Final Rejection |
| 03-06-2003 | Non-Final Rejection |
| 12-10-2002 | Case Docketed to Examiner in GAU |
| 01-18-2002 | Case Docketed to Examiner in GAU |
| 12-07-2001 | Transfer Inquiry to GAU |
| 12-03-2001 | IFW Scan & PACR Auto Security Review |
| 11-27-2001 | Application Dispatched from OIPE |
| 10-05-2001 | Correspondence Address Change |
| 09-26-2001 | Initial Exam Team nn |

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